

ORIGINAL

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November 22, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Ex Parte**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W. – The Portals  
Washington, D.C. 20554

**Re: Intercarrier Compensation for ISP-Bound Traffic – CC Docket 99-68**

Dear Ms. Salas:

Attached to this letter is a one page summary of Bell Atlantic's position in the above captioned proceeding. Also attached is a copy of an interconnection agreement between Bell Atlantic and Level 3 Communications, L.L.C. that covers the state of Virginia. The substance of both of these attachments were discussed in recent meetings with Tamara Preiss and Rodney McDonald of the Competitive Pricing Division.

Please enter this letter and attachments into the record as appropriate. Should you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe Mulieri".

Attachments

Cc: T. Preiss  
R. McDonald

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## RECIPROCAL COMPENSATION

- Bell Atlantic's agreements with CLECs show that marketplace forces can be relied upon if regulation is not heavy-handed; by contrast, if regulators pick winners and losers, then incentive to negotiate evaporates
- Commission should strongly encourage negotiation and commercial arbitration
  - Consistent with deregulatory requirements of Act
  - Would recognize interstate nature of Internet traffic over which states have no jurisdiction
- If no agreement, treat as shared access arrangement where each LEC charges its own customer and shares any access revenue (currently zero under ESP exemption)
- Alternative – initiate rulemaking to set non-usage-based access rate for Internet access
- Usage-based compensation should not be prescribed
  - For customers that remain connected 24x7, "compensation" to CLEC, even at \$0.001, would be \$43/month, while ILEC's entire revenue from line is \$15-25
  - Provides incentive to use line inefficiently and disincentive to use new technology such as DSL for which CLEC receives no "reciprocal compensation"

**AMENDMENT NO. 1**  
**to the**  
**INTERCONNECTION AGREEMENT**  
**between**  
**BELL ATLANTIC – VIRGINIA, INC.**  
**and**  
**XCOM TELEPHONY OF VIRGINIA, INC.**

This Amendment No. 1 is made and effective this 14<sup>th</sup> day of October, 1999, by and between Bell Atlantic – Virginia, Inc. (“BA”), a Virginia corporation with offices at 600 East Main Street, Richmond, Virginia 23219, and Level 3 Communications, L.L.C. (“Level 3”), a Delaware limited liability company with offices at 1025 Eldorado Boulevard, Broomfield, CO 80021. (BA and Level 3 may be referred to individually as a “Party” and collectively as the “Parties”).

**RECITALS:**

WHEREAS, Level 3 is the successor in interest to XCOM Telephony of Virginia, Inc.; and

WHEREAS, BA and Level 3 are parties to an Interconnection Agreement under Sections 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”), effective March 6, 1998 (the “Agreement”); and

WHEREAS, the Parties now desire to amend the Agreement and the Underlying Terms to set forth the terms and conditions that govern the Parties’ payment of Intercarrier Compensation, including compensation for Internet Traffic;

NOW, THEREFORE, in consideration of the promises and mutual agreements herein contained, the Parties agree to amend the Agreement as follows:

*1. Add a new Section 1.82 to the Underlying Terms as follows:*

1.82 “Internet Traffic” means any traffic that is transmitted to or returned from the Internet at any point during the duration of a transmission.

*2. Add a new Section 1.83 to the Underlying Terms as follows:*

1.83 “Compensable Internet Traffic” means dial-up switched Internet Traffic that is originated by an end-user subscriber of one Party, is transmitted to the switched network of the other Party, and then is handed off by that Party to an Internet Service Provider which has been assigned a

telephone number or telephone numbers within an NXX or NXXs which are local to the originating end-user subscriber.

3. *Delete Section 1.61 of the Underlying Terms.*

4. *Add a new Section 1.84 to the Underlying Terms as follows:*

1.84 “Intercarrier Compensation” refers to the remuneration received by one Party (the “Receiving Party”) to recover its costs for receiving and terminating Local Traffic or receiving and handing off Compensable Internet Traffic that originates on the network of the other Party (the “Originating Party”).

5. *Delete existing Sections 4.1.2 through 4.1.4 of the Underlying Terms and insert a new Section 4.1.2 as follows:*

#### **4.1.2 Geographic Relevance**

4.1.2.1 Interconnection Points. The Parties shall establish physical Interconnection Points (“IPs”) at the locations designated on Schedule 4.0, which shall be revised from time to time in accordance with the requirements of this Section. The points on the Level 3 network at which BA shall hand off Local Traffic and Compensable Internet Traffic to Level 3 are designated as the Level 3 Interconnection Points (“Level 3-IPs”). The points on the BA network at which Level 3 shall hand off Local Traffic and Compensable Internet Traffic to BA are designated as the BA Interconnection Points (“BA-IPs”). Each Party, as an Originating Party, may request that the other Party, as a Receiving party, establish IPs on the Receiving Party’s network that are geographically-relevant to the NXXs (and associated rate centers) that are assigned by the Receiving Party. In the case of BA as a Receiving Party, to the extent Level 3 requests BA to establish a geographically-relevant IP in addition to the BA-IPs at the BA Tandems, the geographically-relevant IP shall be the BA end office serving the Customer for whom the traffic is intended. In the case of Level 3 as a Receiving Party, BA may request, and Level 3 will then establish, geographically-relevant IPs by establishing a Level 3-IP at a Collocation site at each BA Tandem in a LATA (or, in the case of a single Tandem LATA, at each BA End Office Host), for those NXXs serving equivalent BA rate centers which subtend the BA Tandem (or BA End Office Host). For purposes of this Section 4.1.2.1, the Parties agree that Level 3-IPs at Collocation sites at the BA Tandems shown in Schedule 4.0 represent geographically relevant IPs for the LATAs listed in Schedule 4.0. In any LATA in which BA agrees that Level 3 may meet its obligation to establish geographically relevant IPs through a Collocation site at fewer than all of the BA Tandems (or BA End Office Host) in a LATA, including the LATAs identified in Schedule 4.0, then BA shall determine and advise Level 3 as to which Level 3 IP established at a Collocation site (or other available Level 3 IP) BA will deliver traffic from each relevant originating rate center or other originating location.

If Level 3 fails to establish a geographically-relevant IP as provided herein within a commercially reasonable time, then Level 3 shall bill and BA shall pay only the applicable Inter-carrier Compensation Rate for the relevant NXX, as set forth in Section 5.7 below, less BA’s monthly recurring rate for unbundled dedicated interoffice transport from BA’s originating End Office to Level 3’s IP.

Should either Party offer additional IPs to any Telecommunications Carrier that is not a Party to this Agreement, the other Party may elect to deliver traffic to such IPs for the NXXs or functionalities served by those IPs. To the extent that any such Level 3-IP is not located at a Collocation site at a BA Tandem (or BA End Office Host), then Level 3 shall permit BA to establish physical interconnection at the Level 3-IP, to the extent such physical interconnection is technically feasible.

At any time that Level 3 establishes a Collocation site at a BA End Office, then either Party may request that such Level 3 Collocation site be established as the Level 3-IP for traffic originated by BA Customers served by that End Office. Such request shall be negotiated pursuant to the Joint Grooming Plan process, and approval shall not be unreasonably withheld or delayed. To the extent that the Parties have already implemented network interconnection in a LATA, then upon BA's request for a geographically-relevant Level 3-IP, the Parties shall negotiate a mutually-acceptable transition process and schedule to implement the geographically-relevant IPs. If Level 3 should fail to establish an IP at an end office Collocation site pursuant to BA's request, or if the Parties have been unable to agree upon a schedule for completing a transition from existing arrangements to geographically relevant Level 3 IPs or to an end office Collocation site Level 3 IP within thirty (30) days following BA's request, Level 3 shall bill and BA shall pay the applicable Inter-carrier Compensation Rate for the relevant NXX, as set forth in Section 5.7 below, less BA's monthly recurring rate for unbundled dedicated interoffice transport from BA's originating End Office to the Level 3-IP.

Should Level 3 choose to obtain transport from BA for Local and Compensable Internet Traffic from a Level 3-IP at a Collocation site to another Level 3 location, BA shall bill and Level 3 shall pay, the applicable unbundled dedicated interoffice transport and channel termination rates set forth herein. Channel termination charges shall not apply where the transport is between Level 3 Collocation sites.

**4.1.2.2 Trunking Architecture.** The Originating Party must establish direct trunking to a Receiving Party's end office (which may have a Tandem-routed overflow) by self-provisioning, purchasing transport rated as unbundled dedicated interoffice transport from the Receiving Party, or purchasing from a third party if the Local and Compensable Internet Traffic destined for that end office exceeds the equivalent of two DS1s for any three (3) months during any six (6) month period. For purposes of this paragraph, BA shall satisfy its end office trunking obligations by handing off traffic to a Level 3 IP. Should Level 3 fail to comply with this end office trunking requirement, then the Inter-carrier Compensation rate to be paid by Level 3 shall be determined as follows: (i) for direct (non-switched) end office trunks delivered to BA at the BA Tandem wire center that is subtended by the BA end office serving the Customer location receiving the call, Level 3 shall pay the applicable Inter-carrier Compensation rate then in effect pursuant to Section 5.7.3, plus \$.0007 per minute of use; and (ii) for Tandem-switched trunks delivered to BA at the BA Tandem Wire Center that is subtended by the relevant BA end office, Level 3 shall pay the Tandem Office Reciprocal Call Termination Rate as set forth in Exhibit A hereto; provided, however, that in the event Level 3 has properly forecasted and ordered the required trunking from BA and BA has been unable to provision the ordered trunking, Level 3 shall not be obligated to pay the higher Tandem Office rate until BA is able to provide the requested trunking.

**6. *Delete Sections 4.2 through 4.3, and Section 4.4.3, of the Underlying Terms.***

7. *Delete existing Section 5.7 of the Underlying Terms and insert an amended section 5.7 as follows:*

**5.7 Intercarrier Compensation Arrangements – Section 251(b)(5)**

The provisions of this Section 5.7 govern the payment of Intercarrier Compensation between the Parties. The Parties intend and agree that the Originating Party's payment of Intercarrier Compensation to the Receiving Party in accordance with the terms of this Agreement shall fulfill the Originating Party's obligation under Section 251(b)(5) of the Act to pay reciprocal compensation to the Receiving Party for termination of Local Traffic, and shall further fulfill any obligation the Originating Party may have under Applicable Law to compensate the Receiving Party for receiving and handing off Compensable Internet Traffic. BA's delivery of traffic to Level 3 that originates with a third carrier is addressed in Section 7.2. Where Level 3 delivers traffic to BA that originates with a third carrier, except as may be set forth herein or subsequently agreed to by the Parties, Level 3 shall pay BA the same amount that such carrier would have paid BA for termination of that traffic at the location the traffic is delivered to BA by Level 3. Compensation for the transport and termination of traffic not specifically addressed in this subsection shall be as provided elsewhere in this Agreement, or if not so provided, as required by the Tariffs of the Party transporting and/or terminating the traffic.

5.7.1 Nothing in this Agreement shall be construed to limit either Party's ability to designate the areas within which that Party's Customers may make calls which that Party rates as "local" in its Customer Tariffs.

5.7.2 Each Party shall pay Intercarrier Compensation to the other Party at equal and symmetrical rates, as provided in Section 5.7.3 below, on condition that the other Party continues to fulfill its obligations under Section 4.1.2. These rates are to be applied at the Level 3-IP for traffic delivered by BA, and at the BA-IP for traffic delivered by Level 3. No additional charges, including port or transport charges, shall apply for receiving and terminating Local Traffic or receiving and handing off Compensable Internet Traffic delivered to the BA-IP or the Level 3-IP, except as set forth in the Price Schedule. When Local Traffic or Compensable Internet Traffic is exchanged over the same trunks as Toll Traffic, any port or transport or other applicable access charges related to the delivery of Toll Traffic from the IP to an end user shall be prorated to be applied only to the Toll Traffic.

5.7.3 Subject to the conditions set forth in Section 5.7.4 below, the Originating Party shall compensate the Receiving Party as follows:

5.7.3.1 For Local Traffic and Compensable Internet Traffic delivered by the Originating Party to the Receiving Party during the period from and including February 1, 1999 to and including December 31, 1999, the Originating Party shall compensate the Receiving Party at a rate equal to the lesser of \$.003 per minute of use or the applicable Reciprocal Call Termination rates in effect forty-five (45) days prior to the date on which the Parties agree in writing to pay Intercarrier Compensation (as set forth in Amendment No. 1).

5.7.3.2 For Local Traffic and Compensable Internet Traffic delivered by the Originating Party to the Receiving Party during the period from and including January 1, 2000 to and including March 31, 2000, the Originating Party shall compensate the Receiving Party at a rate equal to the lesser of \$.0025 per minute of use or the applicable Reciprocal Call Termination rates in effect forty-five (45) days prior to the date on which the Parties agree in writing to pay Intercarrier Compensation (as set forth in Amendment No. 1).

5.7.3.3 For Local Traffic and Compensable Internet Traffic delivered by the Originating Party to the Receiving Party during the period from and including April 1, 2000 to and including June 30, 2000, the Originating Party shall compensate the Receiving Party at a rate equal to the lesser of \$.002 per minute of use or the applicable Reciprocal Call Termination rates in effect forty-five (45) days prior to the date on which the Parties agree in writing to pay Inter-carrier Compensation (as set forth in Amendment No. 1).

5.7.3.4 For Local Traffic and Compensable Internet Traffic delivered by the Originating Party to the Receiving Party during the period from and including July 1, 2000 to and including September 30, 2002, the Originating Party shall compensate the Receiving Party at a rate equal to the lesser of \$.0015 per minute of use or the applicable Reciprocal Call Termination rates in effect forty-five (45) days prior to the date on which the Parties agree in writing to pay Inter-carrier Compensation (as set forth in Amendment No. 1); provided, however, that during any month after January 1, 2001 in which the balance of traffic (including both Local Traffic and Internet Traffic) between the Originating Party and the Receiving Party exceeds a ratio of 10:1, then the rate to be paid by the Originating Party to the Receiving Party in that month for all traffic in excess of said 10:1 ratio shall be the lesser of \$.0012 per minute of use or the applicable Reciprocal Call Termination rates in effect forty-five (45) days prior to the date on which the Parties agree in writing to pay Inter-carrier Compensation (as set forth in Amendment No. 1).

5.7.4 If BA should fail to provide the number of Traffic Exchange Trunks set forth in the schedule of Initial Trunk Requirements provided for in Section 10.3.1 for any calendar quarter by the end of that quarter (as the quarterly requirements may have been adjusted from time to time in accordance with Section 10.3.2 below), the Inter-carrier Compensation rate for the following calendar quarter shall not be reduced as contemplated in Section 5.7.3 above until BA has provisioned the number of Traffic Exchange Trunks specified in the Initial Trunk Requirements (as adjusted in accordance with Section 10.3.2 below); *provided*, however, that in no event shall the reduction in the Inter-carrier Compensation rate be postponed if BA is unable to install any number of Initial Trunks because: (i) Level 3 lacks sufficient switching ports to accommodate those Initial Trunks at the time BA has notified Level 3 through an ASR or similar mechanism that it is prepared to install and test them; (ii) at the time of such ASR or similar mechanism, Level 3 has not completed any required network functions; or (iii) Level 3 fails to provide timely confirmation that it is prepared to accept installation of the Initial Trunks.

5.7.5 The Inter-carrier Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service, InterLATA or IntraLATA Toll Traffic, or Internet Traffic other than Compensable Internet Traffic. All Switched Exchange Access Service and all Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state Tariffs. In addition, the Inter-carrier Compensation arrangements set forth in this Agreement are not applicable to special access, private line or any other traffic that is not switched by the Originating and Receiving Parties.

5.7.6 Compensation for receiving and handing off or terminating Traffic which has been subject to performance of INP by one Party for the other Party pursuant to Section 13 shall be as specified in subsection 13.6.

5.7.7 The designation of Traffic as Local or Toll for purposes of compensation shall be based on the actual originating and terminating points of the complete end-to-end call, regardless of the carrier(s) involved in carrying any segment of the call.

5.7.8 Each Party reserves the right to measure and audit all Traffic to ensure that proper rates are

being applied appropriately. Each Party agrees to provide the necessary Traffic data or permit the other Party's recording equipment to be installed for sampling purposes in conjunction with any such audit.

5.7.9 The Parties will engage in settlements of alternate-billed calls (e.g., collect, calling card, and third-party billed calls) originated or authorized by their respective Customers in Virginia in accordance with the terms of an appropriate billing services agreement for intraLATA intrastate alternate-billed calls or such other arrangement as may be agreed to by the Parties.

5.7.10 In entering into this Agreement, the Parties acknowledge that they have not reached agreement as to the compensation structure that should apply to Internet Traffic over which telephony is conducted ("Internet Telephony"). The entry into, filing and performance by the Parties of this Agreement does not in any way constitute a waiver by either Party of any of the rights and remedies it may have to seek review of the compensation structure that should apply to Internet Telephony.

8. *Delete existing Section 10.3 of the Underlying Terms and insert a new Section 10.3 to read as follows:*

### **10.3 Initial Requirements and Forecasting for Trunk Provisioning**

Within ten (10) days after execution of an agreement containing this Section, Level 3 shall provide BA a two (2) year traffic forecast. This initial forecast will provide the amount of traffic to be exchanged between the Parties over each of the Traffic Exchange Trunk groups over the next eight (8) calendar quarters. The forecast shall be updated and provided to BA on an as-needed basis, but no less frequently than quarterly and no more frequently than monthly. All forecasts shall comply with the BA CLEC Interconnection Trunking Forecast Guide and shall include, at a minimum, Access Carrier Terminal Location ("ACTL"), trunk group type (Local Traffic/intraLATA Toll/Compensable Internet Traffic, Toll Traffic, Operator Services, 911, etc.), code (identifies trunk group), A location/Z location (CLLI codes for Level 3-IPs and BA-IPs), interface type (e.g., DS1), and trunks in service each year (cumulative).

10.3.1 Initial Trunking Requirements and Forecasts. In consideration of Level 3's agreement to the provisions set forth in Sections 4.1.2 and 5.7, as an initial matter BA shall provision the number of voice grade equivalent Traffic Exchange Trunks from BA to Level 3 IPs in each of three successive calendar quarters, beginning in the Fourth Quarter of 1999 and ending in the Second Quarter of 2000, as shall be set forth in a separate schedule and related payment terms to be agreed upon by Level 3 and BA (the "Initial Trunk Requirements").

After the Initial Trunk Requirements have been provisioned, Level 3 shall provide trunk forecasts for both inbound (from BA) and outbound (from Level 3) traffic. Level 3 shall use its best efforts to make the forecasts as accurate as possible based on reasonable engineering criteria. BA will exercise commercially reasonable efforts to provide the number of Traffic Exchange Trunks Level 3 forecasts, as adjusted pursuant to Section 10.3.2 below; provided, however, that in all cases BA's provision of the forecasted number of Traffic Exchange Trunks to Level 3 is subject to capacity constraints.

10.3.2 Monitoring and Adjusting Trunking Requirements and Forecasts. BA and Level 3 shall monitor both inbound and outbound traffic on each trunk group that is installed pursuant to the schedule of Initial Trunk Requirements provided for in Section 10.3.1 and Level 3's subsequent quarterly forecasts. At any time after the end of each calendar quarter, based on a review of the capacity utilization during such quarter for installed trunks carrying Local and Compensable Internet



Traffic from BA to Level 3, and notwithstanding any contrary provision in Section 4.1.2: (a) subject to the provisions of clause (b) following, after giving fifteen (15) days advance written notice to Level 3, BA may disconnect any trunk that it has determined is not being utilized for Local Traffic or Compensable Internet Traffic at a sixty-five percent (65%) busy hour utilization level ("Underutilized Trunks"), provided that the Parties have not otherwise agreed; and (b) within ten (10) days following the notice prescribed in clause (a) above, Level 3 may request that BA not disconnect some or all of the Underutilized Trunks, in which event BA shall keep the trunks in service and may invoice Level 3 for, and Level 3 shall pay, all applicable recurring and nonrecurring charges for the Underutilized Trunks, such charges to be retroactive to the date on which such trunks were installed and to continue until such trunks are disconnected, or to the extent Level 3 requests that such trunks remain in service, until they reach a sixty-five percent (65%) busy hour utilization level for Local Traffic and Compensable Internet Traffic. In addition, beginning after October 1, 2000, the Level 3 forecasts for each subsequent forecast period shall be automatically reduced by the number of trunks that have been determined to be subject to disconnection pursuant to the foregoing procedures. To the extent Level 3 requests BA to install additional trunks in any forecast period following the end of Second Quarter 2000 that are not included in the forecast for that period (as such forecast may be revised from time to time pursuant to the preceding sentence), such trunks may be provisioned by BA subject to the conditions set forth in Section 10.3.1 above, and all applicable recurring and nonrecurring charges for such trunks shall be billed to and paid by Level 3 until such trunks reach a sixty-five percent (65%) busy hour utilization level for Local Traffic and Compensable Internet Traffic. To the extent that any Tandem trunk group is utilized at a busy hour level of ninety percent (90%) or greater, the Parties shall negotiate in good faith for the installation of augmented facilities, including the possibility of expediting such installations.

9. *Revise Section 22.1 of the Underlying Terms to read as follows:*

22.1 This Agreement shall be effective as of the date first above written and shall continue in effect until November 15, 1999 (the "Initial Term"), or until such time as a successor agreement is negotiated in good faith and executed by the Parties, whichever is later. The Parties acknowledge that Level 3 has requested, effective as of October 13, 1999, that Bell Atlantic commence negotiation of a successor agreement with Level 3, and that the arbitration window provided for in Section 252(b) of the Act shall be determined as from that date. The Parties have agreed to promptly enter into good faith negotiations to conclude any terms of such successor agreement that have not already been settled between the Parties as of October 14, 1999. Any notice of termination or request for negotiation issued by either Party prior to October 13, 1999 is rescinded.

12. *Add a revised Schedule 4.0, appended hereto.*

13. *Change all references to "Reciprocal Compensation" in the Underlying Terms to read "Inter-carrier Compensation".*

14. *Change all references to "XCOM" to "Level 3" and all references to "X-IP" to "Level 3-IP."*

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed as of the date first set forth above.

**BELL ATLANTIC – VIRGINIA, INC.**

**LEVEL 3 COMMUNICATIONS L.L.C.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## SCHEDULE 4.0

LATA

IP SITE

CLLI CODE REFERENCE

### Level 3 IPs

LATA 236

BA Tandem – Southwest D.C.

WASHDCSW90T

### BA IPs

The BA terminating End Office serving the BA Customer or the BA Tandem subtended by the terminating End Office serving the BA Customer